

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Roosevelt Simmons)
 Plaintiff)
)
 v.)
)
 Mase And Company, Llc Et Al.)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
 2011-CP-10-1084

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: Edward A. Bertele, Bar No. 72521 Address: 1812 Pierce Street Charleston, SC 29492 phone: 843-471-2082 fax: 843-471-2082 e-mail: ebertele@msn.com other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Compel discovery Estimated Time Needed: 15 min Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
_____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	July 20, 2012 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25. <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____	

CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)
Vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, JR.,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTIONS)
DEPARTMENT and)
HARRY LONG)
Defendants)

FILED
2012 JUL 23 PM 2:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**PLAINTIFF'S MOTION TO COMPEL DISCOVERY
AND TO IMPOSE SANCTIONS AGAINST
COUNTY DEFENDANTS**

PLEASE TAKE NOTICE that on the tenth day following service of the within
NOTICE of MOTION or as soon thereafter as counsel may be heard, plaintiff Roosevelt
Simmons, by his attorney, Edward A. Bertele, Esq. shall move before the Court of Common
Pleas for the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street,
Charleston, SC 29401 for an Order pursuant to South Carolina Rules of Civil Procedure 37 to
compel discovery, an award of legal fees and for sanctions for failure to comply. Plaintiff relies
upon the pleadings filed heretofore and reasons set forth herein. Counsel hereby affirms that he
has communicated with the defendant's counsel in a good faith attempt to avoid the filing of this
motion

BASIS FOR THIS MOTION

Plaintiff commenced this action to vacate a certain Sheriff's sale and deed of property
known as TMS 282-00-00-498 (TMS 498) which occurred in 2009 and 2010. Plaintiff contends

that the sale and deed are invalid because the judgment on which they were based, a default judgment entered in 2000 by the Magistrate's Court for an \$89.00 user fee and court costs, was invalid because the Magistrate's Court did not have jurisdiction over the Revenue Collections Department (formerly known as the Business License/User Fee Department) suit for nonpayment of a user fee. The complaint also seeks to invalidate not only the 2000 judgment but several others entered in later years on the same basis. Defendants are the current owner of TMS 498 (Mase & Company, LLC) and the county department and agencies and the individual responsible for obtaining and enforcing the judgments (county defendants).

In addition to seeking to invalidate the user fee judgments, the Second Amended Complaint (Fourth Count) alleges among other things that the county defendants including defendant Deputy Harry Long violated plaintiff's right to equal protection of the laws in the manner in which the judgment was enforced and the sale conducted. Discovery provided by the Sheriff's Department establishes that Deputy Long improperly levied upon real property owned by Simmons (TMS 498) when there were numerous vehicles and equipment owned by Simmons which could have been used to satisfy the judgment. Defendant Long subsequently sold this parcel which was assessed by the County Tax Assessor for \$24,000 for \$600. After deducting the costs of sale, this amount was insufficient to satisfy the \$144.00 judgment. Discovery provided by the Sheriff's Department and defendant Mase & Company, LLC disclosed that Deputy Long sold two other parcels of real property to Mase & Co., LLC to satisfy user fee judgments against Herbert Fraser and George Garrett. Simmons requested discovery of the Sheriff's Department files relating to enforcement of user fee judgment against those two property owners to determine whether there is a pattern or practice in the manner in which the Deputy Long levies

upon real property. See Exhibit A. To date, the Sheriff's Department has failed to provide the requested information.

The Fifth Count of the Second Amended Complaint alleges among other things that the county defendants committed a tort by wrongfully retaining Deputy Long in 2005. Pursuant to plaintiff's discovery requests, defendant Sheriff's Department produced Deputy Long's personnel file. According to Sheriff's Department records, Deputy Long was subject to several disciplinary actions since joining the department including two (2) suspensions and three (3) letter of reprimand. The reasons for Long's most recent suspension were redacted from his personnel file contrary to the Sheriff's Department own policy which states: "Suspensions will be **permanently** documented in the employee's personnel file." See Exhibit B. In May 2012 plaintiff requested "all documents pertaining to the redaction indicating when and by whom it was authorized and performed" but the Sheriff's department has failed to comply. See Exhibit C.

One of Deputy Long's reprimands was due to his failure to transport a prisoner, Karlton Hillyard that Long had arrested to a trial on a traffic summons that Long has issued. As a result, Hillyard was held in contempt and three bench warrants were issued for his arrest. Long's conduct was described "irresponsible" and "unprofessional". Plaintiff requested discovery of Karlton Hillyard's arrest record to determine the circumstances involving Deputy Long's arrest of Hillyard and whether it might be relevant to Deputy Long's conduct toward Simmons. Counsel for the Sheriff's Department responded that this information was not relevant and is public information, See Exhibit D. Since neither of these reasons is a proper basis for objection or failure to comply, plaintiff has renewed his request for production. See Exhibit E.

Finally, plaintiff requested by Notice to Produce dated November 8, 2011 that the Sheriff's Department provide a copy of its Policies and Procedures. See Exhibit F. Plaintiff renewed this request several times and made a final request on May 27, 2012. See Exhibit C.

The county defendants had an obligation to provide the requested information. The Sheriff's Department files relating to enforcement of user fee judgments against Herbert Fraser and George Garrett can provide information relating to the custom and practices of Deputy Long in the enforcement of user fee judgments and are relevant to Simmons claim of a violation of equal protection. Documents pertaining to the redaction of Deputy Long's suspension relate to Simmons claim that the Sheriff's Department wrongfully retained Long after a series of disciplinary infractions and may evidence a cover up since the redaction violates the Department's policy that all suspension must permanently remain part of the personnel file. Karlton Hillyard's arrest record may contain evidence of the reasons for Deputy Long's irresponsible and unprofessional behavior that support Simmons claim that he was wrongfully retained by the Department. The Sheriff's Department Policy and Procedures Manual is relevant to the personnel practices by the Department in retaining Deputy Long. Therefore, all of the requested information is demonstrably relevant to the issues raised by Simmons.

Plaintiff requests that defendants be ordered to provide the discovery requested within 10 days. Plaintiff also requests that defendants' failure to do so should result in sanctions including dismissal of their answer. Finally, plaintiff request an award of legal fees since the defendants have not timely filed any valid objection to the information requested and have willfully failed to comply with reasonable discovery requests.

CONCLUSION

Plaintiff has established that he is entitled to relief due to the county defendants' failure to provide discovery and respectfully requests that the court grant his motion including an order to provide discovery within 10 days, an award of legal fees for failure to comply and order dismissing the county defendants Answer if they fail to comply within the time required.

Respectfully submitted,


Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082

Attorney for plaintiff, Roosevelt Simmons'
By: 

Dated: July 20, 2012
Charleston, SC

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the within motion to amend the Second Amended Complaint and Appendix was served upon the defendants' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at their last known mailing address.


Edward A. Bertele, Esq.

July 21, 2012

SIMMONS V MASE & COMPANY, LLC et al
2011-CP10-1084

EXHIBITS TO MOTION TO COMPEL

- A. Notice to Produce Documents dated May 30, 2012
- B. Charleston County Sheriff's Office Policy and Procedure Manual, Page 3-08
- C. Letter to Christopher Dorsel, Esq. dated May 27, 2012
- D. Letter by Christopher Dorsel, Esq. dated March 29, 2012
- E. Letter to Christopher Dorsel, Esq. dated April 5, 2012
- F. Notice of Deposition and to Produce Documents dated November 8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)
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Vs.)
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MASE and COMPANY, LLC,)
J. AL CANNON, JR.,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTIONS)
DEPARTMENT and)
HARRY LONG)
Defendants)

NOTICE TO PRODUCE DOCUMENTS

Please take notice that pursuant to R 34, SCRPC defendants shall produce the following whether in written, electronic or any other tangible form within the time provided by the South Carolina Rules of Civil Procedure:

1. All documents relating to the levy, execution and sale of the real property designated as TMS 762-00-00-138 by the Sheriff of Charleston County for judgments for user fees against George Garrett as shown on documents previously produced by Charleston County, Bates No. 148, 152;
2. All documents relating to the levy, execution and sale of the real property designated as TMS 460-07-04-153 by the Sheriff of Charleston County for judgments for user fees against Herbert Fraser as shown on documents previously produced by Charleston County, Bates No. 153;
3. All agreements for reimbursement of the Business License/User Fee Department by Charleston County for the period 1987 to present;

A.

4. Statements of payments made to the Business License/User Fee Department by Charleston County for the period 1987 to present;
5. All ordinances adopted by Charleston County authorizing reimbursement of the Business License/User Fee Department for the period 1987;

Respectfully.

Edward A. Bertele
1812 Pierce Street
Charleston, SC 29492
Attorney for plaintiff

May 30, 2012

3. The written reprimand will identify the violations charged against the employee or the failures in work performance of the employee and will specify corrective action. It will warn the employee that repeated offenses will lead to sterner measures, including possible discharge. The written reprimand will be documented in the employee's personnel file. Written reprimands may be removed from the employee's personnel file after one year upon written application and approval of the Sheriff or his designee.

F. Suspension:

1. A suspension is a serious disciplinary action in which the employee must forfeit pay for misconduct considered to be serious or part of a continuing pattern of behavior involving repeated misconduct.
2. When necessary, supervisors may issue the following suspensions:
 - a. Sergeants: one to three days
 - b. Lieutenants: one to five days
 - c. Captains: one to 10 days
 - d. Majors: one to 20 days
 - e. Chief Deputies: one to 30 days.
 - f. Sheriff/Assistant Sheriff: one day through termination.
3. Any personnel placed on suspension must turn in agency identification, badge, weapon(s), keys, key cards, and vehicle.
4. Suspensions will be permanently documented in the employee's personnel file.
5. Employees under suspension have no authority to represent the Sheriff's Office. (Ref: CALEA 26.1.5)

EDWARD A. BERTELE, ESQ.
ATTORNEY AT LAW
1812 PIERCE STREET
CHARLESTON, SC 29492
Email: ebertele@msn.com

Member: SC, NJ & NY bars

Ph: (843) 471-2082
Fax: (843) 471-2082

May 27, 2012

VIA TELEFAX

Christopher T. Dorsel, Esq.
Senn Law Firm, LLC
PO Box 12279
Charleston, SC 29422

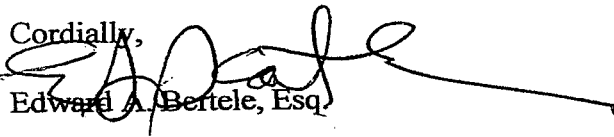
Re: Simmons v. Mase and Co, LLC. et al
2011-CP10-1084

Dear Chris:

As we discussed earlier, the documents your office previously provided in response to my November 8, 2011 Notice to Produce, specifically item No. 1 requesting the "Charleston County Sheriff's Office Policies and Procedures were not fully responsive. In particular, your office provided only Procedures 3-02 and 3-08 of the Manual. Accordingly please comply with the original request.

Also, I previously requested the unredacted pages of Master Deputy Long's personnel file, Bates No. 551-552. Your office advised that these came to you in redacted form. Those pages documented that Master Deputy Long had been suspended. Procedure 3-08, Section III (F) (4) indicates that all suspensions that be permanently documented in the employee's file. Accordingly, I request all documents pertaining to the redaction indicating when and by whom it was authorized and performed in violation of department policy.

Cordially,


Edward A. Bertele, Esq.

CC: Wendy Keefer, Esq.

C

Senn Legal, LLC.
Attorneys at Law

*3 Wesley Drive
Post Office Box 12279
Charleston, South Carolina 29422-2279
Telephone: (843) 556-4045
Facsimile: (843) 556-4046*

*Sandra J. Senn
Robin L. Jackson
Christopher T. Dorsel
Caitlin E. Pierson*

*Of Counsel
Hon. Jenny A. Horne
(House District 94)
(Licensed in SC & NC)*

March 29, 2012

Edward A. Bertele, Esquire
1812 Pierce Street
Charleston, SC 29492

RE: Roosevelt Simmons v. Mase and Company, LLC. Et al
Civil Action.: 2011-CP-10-1084

Dear Ed,

Please allow this letter to serve as both a response to your March 2, 2012 letter as well as a supplemental discovery response.

- A) Counsel for Defendant is unaware of any specific ordinance addressing this matter, but attaches to this letter an Ordinance regarding the User Fee bates labeled 0755-1104 through 0755-1118.
- B) The documents listed as Bates No. 551 and 552 were redacted in 2004 (as indicated on the actual documents). These documents were not redacted by my office and due to the time elapsed from those documents and this lawsuit, the redacted material cannot be provided. You further request copies of a third party, Karlton Hillyard, arrest record. I object to this request as I fail to see how a third party's arrest record bears any relevance to the claims made by your client in this lawsuit. Further, an arrest record is a matter of public record.
- C) Please see the enclosed documents Bates Labeled 0755-1119 through 0755-1143. We are continuing to work on obtaining the Storm Water documents.
- D) In my email to you of February 10, 2012, I have responded to items No.4 & 5 advising that no such documents exist.

D

Edward A. Bertele, Esquire
March 29, 2012
Page 2

With kind regards, I am,

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Dorsel". The signature is fluid and cursive, with the first name "Chris" and the last name "Dorsel" clearly distinguishable.

Christopher T. Dorsel

CTD/lem
Enclosure

cc: Wendy J. Keefer, Esquire (*w/out enclosures*)

**EDWARD A. BERTELE, ESQ.
ATTORNEY AT LAW
1812 PIERCE STREET
CHARLESTON, SC 29492
Email: ebertele@msn.com**

Member: SC, NJ & NY bars

Ph: (843) 471-2082
Fax: (843) 471-2082

April 5, 2012

VIA TELEFAX

Christopher T. Dorsel, Esq.
Senn, McDonald & Leinbach, LLC
PO Box 12279
Charleston, SC 29422

Re: Simmons v. Mase and Co, LLC. et al
2011-CP-1084

Dear Chris:

With your March 29th letter, you provided certain documents in response to my earlier discovery requests. In your letter you identify Bates Nos. 0755-1119 to 1143 as responsive to my September 13, 2011 Notice to Produce, item No. 2 which requested: "Annual statement of the solid waste disposal fees received and disbursed by the "Solid Waste User Fee Revenue Fund" as provided under Ordinance 10-56 from 1988 to present". I have reviewed these documents and do not believe that they are fully responsive because they do not include any information about the receipts and disbursements from the Solid Waste User Fee Revenue Fund as requested. Accordingly, I request that you provide this information forthwith. This request has been outstanding since September and is relevant to plaintiff's claims that the user fee is a tax. Please advise when you will comply.

I also request that you provide a SCRCP 30(b) (6) representative having knowledge of how the information contained on the summary reports, Bates Nos. 0755-1119 to 1143, is collected and compiled and what each category shown on these reports represents for deposition which should be scheduled for the week of April 17th or the following week at the convenience of the witness and your office.

Finally, I renew my request for the Sheriff's Department arrest record of Karlton Hillyard. Your objection on relevancy grounds does not satisfy the South Carolina Rules for refusing to comply. Thank you for your previous courtesy and cooperation.

Cordially,

Edward A. Bertele, Esq.

CC: Wendy Keefer, Esq.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS)
Plaintiff)
Vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, JR.,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTION)
DEPARTMENT and)
HARRY LONG)
Defendants)

Civil Action No: 2:11-cv-00709-RMG-BM

Notice of Deposition
and Document Production

Please take notice that the plaintiff requests that pursuant to FRCP 30 the defendant Sheriff of Charleston County produce the following persons whose testimony shall be taken under oath before a person authorized by law commencing at 10:00 am on the date and place set forth herein and to continue thereafter day to day until complete.

1. Sgt. Angie Palmer
2. Captain G. Stanley
3. E. Wilson
4. M. Garrison
5. Deputy Tice
6. Rater on Deputy Long Annual Employee Evaluation for Oct.1, 2004 - April 22, 2005
7. Reviewer on Deputy Long Annual Employee Evaluation for Oct.1,2004 - April 22, 2005

Date: **November 18, 2011**


Place: Senn, McDonald & Leinbach, LLC, 3 Wesley Drive, Charleston, SC

F

Please take further notice that pursuant to FRCP 34, defendants shall produce the following whether in written, electronic or any other tangible form at the time and place of the taking of the testimony referenced herein:

1. Charleston County Sheriff's Office Policies and Procedures
2. Deputy Harry Long Annual Employee Evaluation August 31, 2009 - August 31, 2010
3. Deputy Harry Long Annual Employee Evaluation August 31, 2010 - August 31, 2011

Respectfully,


Edward A. Bertele
1812 Pierce Street
Charleston, SC 29492
Attorney for plaintiff

November 8, 2011

**EDWARD A. BERTELE, ESQ.
ATTORNEY AT LAW
1812 PIERCE STREET
CHARLESTON, SC 29492
Email: ebertele@msn.com**

Member: SC, NJ & NY bars

Ph: (843) 471-2082
Fax: (843) 471-2082

July 20, 2012

Ms. Julie J. Armstrong
Clerk of the Court
Charleston County Courthouse
100 Broad Street
Charleston, SC 29401

Re: Simmons v. Mase and Co, LLC. et al
Case No. 2011-CP-10-1084

Dear Ms. Armstrong:

Enclosed for filing is plaintiff's motion to compel discovery with Exhibits, a motion cover sheet together with my check for the \$25. filing fee and proof of service. Thank you for your kind assistance in this matter.

Very truly yours,



Edward A. Bertele, Esq.

Encl:

CC: Chris Dorsel, Esq. w/o enclosure
Wendy Keefer, Esq. “ “